

CAS ON  
EAB  
-H26



# ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 337

DATE: Monday, January 6, 1992

BEFORE:

A. KOVEN Chairman

E. MARTEL Member



FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416)963-1249

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL  
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR  
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental  
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental  
Assessment for Timber Management on Crown  
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the  
Honourable Jim Bradley, Minister of the  
Environment, requiring the Environmental  
Assessment Board to hold a hearing with  
respect to a Class Environmental  
Assessment (No. NR-AA-30) of an  
undertaking by the Ministry of Natural  
Resources for the activity of timber  
management on Crown Lands in Ontario.

-----  
Hearing held at the Ontario Highway Transport  
Board, 151 Bloor Street West, 10th Floor,  
Toronto, Ontario, on Monday, January 6th,  
1992, commencing at 1:00 p.m.

-----  
VOLUME 337

BEFORE:

MRS. ANNE KOVEN  
MR. ELIE MARTEL

Chairman  
Member



A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	
MS. C. BLASTORAH )	MINISTRY OF NATURAL
MS. K. MURPHY )	RESOURCES
MR. B. CAMPBELL )	
MS. J. SEABORN )	MINISTRY OF ENVIRONMENT
MS. N. GILLESPIE )	
MR. R. TUER, Q.C. )	
MS. E. CRONK )	ONTARIO FOREST
MR. R. COSMAN )	INDUSTRIES ASSOCIATION
MR P. CASSIDY )	
MR. D. HUNT )	
MR. R. BERAM	ENVIRONMENTAL ASSESSMENT BOARD
MR. E. HANNA )	ONTARIO FEDERATION OF
DR. T. QUINNEY )	ANGLERS & HUNTERS AND
MR. D. HUNTER )	NISHNAWBE-ASKI NATION
MR. M. BAEDER )	and WINDIGO TRIBAL COUNCIL
MS. M. SWENARCHUK )	FORESTS FOR TOMORROW
MR. R. LINDGREN )	
MR. D. COLBORNE )	GRAND COUNCIL TREATY
MR. G. KAKEWAY )	#3.
MR. J. IRWIN	ONTARIO METIS & ABORIGINAL ASSOCIATION
MR. J. ANTLE	NORTHERN ONTARIO TOURIST OUTFITTERS ASSOCIATION
MS. M. HALL	KIMBERLY-CLARK OF CANADA LIMITED and SPRUCE FALLS POWER & PAPER COMPANY
MR. R. COTTON	BOISE CASCADE OF CANADA LTD.







APPEARANCES: (Cont'd)

MR. Y. GERVAIS	)	ONTARIO TRAPPERS
MR. R. BARNES	)	ASSOCIATION
MR. L. GREENSPOON	)	NORTHWATCH
MS. B. LLOYD	)	
MR. J.W. ERICKSON, Q.C.)		RED LAKE-EAR FALLS
MR. B. BABCOCK	)	JOINT MUNICIPAL COMMITTEE
MR. D. SCOTT	)	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR	)	ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL		GREAT LAKES FOREST
MR. S.M. MAKUCH		CANADIAN PACIFIC FOREST PRODUCTS LTD.
MR. D. CURTIS	)	ONTARIO PROFESSIONAL
MR. J. EBBS	)	FORESTERS ASSOCIATION
MR. D. KING		VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. H. GRAHAM		CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN		DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC		MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES		ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI		BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY



APPEARANCES: (Cont'd)

MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON
MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION





I N D E X   O F   P R O C E E D I N G S

	<u>Page No.</u>
Submissions	58949
Scoping Session	58984





I N D E X   O F   E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
1981B	Letter from Ken McCrae received December 23, 1991.	59005
1989B	Letter dated November 29, 1991 from Mr. Beck, Pembroke Outdoor Sportsmen Club.	59005



1 ---Upon commencing at 1:00 p.m.

2 MADAM CHAIR: Good afternoon, ladies and  
3 gentlemen. Please be seated.

4 Good afternoon, ladies and gentlemen.  
5 Today of course was the scheduled date for the Board to  
6 begin hearing the evidence of the Coalition of the  
7 Ontario Federation of Anglers & Hunters and the  
8 Northern Ontario Tourist Operators Association.

9 And we understand that there have been  
10 problems in presenting the evidence of the Coalition's  
11 witness panel 1 and the Board had asked that a session  
12 be scheduled today, this is at our request, and the  
13 reason we wanted to talk to the Coalition is because  
14 our interest in what we understand to be - although we  
15 will have to be apprised of exactly what the situation  
16 is - we understand that the Coalition will be  
17 withdrawing its witness panel 1 evidence, and the  
18 Board's interest in that is limited to the Board's need  
19 to get reassurance that the Coalition's case will  
20 proceed as scheduled.

21 All of us at the hearing know the  
22 problems that have been involved in scheduling what was  
23 the Ontario Federation of Anglers & Hunters case and is  
24 now the Coalition.

25 This dates back I suppose to one of our



1       procedural directives on scheduling in June of 1990,  
2       many ups and downs between then and now, and the last  
3       procedural direction on scheduling was September, 1991  
4       where we acceded to the OFAH/Coalition's request to yet  
5       another delay in the beginning of the presentation of  
6       their case to today, and at that time I think we made  
7       it very clear in our direction that this was to be the  
8       start of the case and the Board could really see no  
9       reason why there would be any delay in that.

10               So we are gathered here today to hear  
11       directly from the Coalition as to the status of the  
12       witness panel 1's evidence, and the Board needs to get  
13       confidence today that the Coalition will be able to  
14       manage the presentation of the remaining eight witness  
15       statements in its case, and we are in receipt of those  
16       eight written witness statements, and we really are  
17       urging the Coalition to be very forthcoming from us and  
18       to provide all the reassurance we feel we need to have  
19       confidence that this case can be gotten off the ground  
20       and can be put in front of us within the schedule that  
21       we set.

22               I think all the parties to the hearing  
23       are aware that this hearing is very tightly scheduled.  
24       This Board will rise in December of this year and that  
25       will be the end of the hearing. I guess we're all

1       tired of hearing me say that this hearing has gone on  
2       too long. We started in May of 1988 and this Board  
3       will complete this hearing in December of this year,  
4       and you can take it from Mr. Pascoe's scheduling that  
5       every day of the hearing is scheduled from now until  
6       then.

7                       We have several questions to put to the  
8       Coalition for the purposes of getting the reassurance  
9       we need with respect to the status of witness panel 1  
10      and future witness panels, and these questions are  
11      being posed by us.

12                     Mr. Martel and I have put our heads  
13      together and have tried to come up with questions that  
14      will give us the reassurance that indeed the Coalition  
15      will be able to get its evidence before us in within  
16      the scheduled time. And I would repeat that the  
17      purpose of this session is for no other reason than to  
18      satisfy the Board of the Coalition's ability to mount  
19      its case and complete it as we had scheduled.

20                     The Board had instructed Mr. Beram - and  
21      I think all of you know who Mr. Beram is, he's our  
22      Board counsel - we instructed Mr. Beram to take  
23      whatever initiatives he felt were appropriate to get  
24      witness panel 1 before us, to assist the Coalition in  
25      any way he could to keep this on schedule. I

1 understand that he's taken various efforts to do that  
2 and tried to remove any obstacles standing in the way  
3 of the parties to get this thing going, and so far as I  
4 know - unless Mr. Beram has something to add to that -  
5 his efforts have been unsuccessful.

6 Which brings us to the first question  
7 that the Board has, and that is: What is the status of  
8 the panel 1 evidence, and what is the intention of the  
9 Coalition with respect to the panel 1 planning  
10 evidence?

11 Our list of questions is fairly short and  
12 if it's any help at all - I see some new faces staring  
13 at the Board - we'll go through our questions and then  
14 we will hear from the Coalition's.

15 And I don't know, I see other parties  
16 here and they may or may not want to say something  
17 about this, but we can hear from the Coalition first.

18 So our first question, we really want to  
19 know what is going to be happening with the witness  
20 panel No. 1 evidence.

21 Our second question has to do with, we  
22 understand that the Coalition has retained counsel, and  
23 our question is: Will this firm be leading the  
24 Coalition's future evidence or what are they going --  
25 what is the participation in this hearing on behalf of



1 the Coalition?

2 Our third question has to do -- well, I  
3 suppose it's a statement on our part more than a  
4 question, and that is, there appeared to be some  
5 confusion at our last scoping session with respect to  
6 the deadline of the interrogatories for witness  
7 statements generally, but I understand it applied  
8 primarily to witness statement No. 1 and at that time  
9 there was a suggestion made in a letter by Mr. Hanna  
10 and in his remarks to the Board that, in fact, one of  
11 our staff, Mr. Pascoe, who is the hearing coordinator,  
12 had agreed in some way to late filing of  
13 interrogatories.

14 Our understanding is that was not the  
15 case, and our interest in this matter has to do with  
16 the responsibility, who's responsible for the  
17 Coalition's case. We have had Mr. Hanna in front of us  
18 since the beginning of this hearing. There have been  
19 other participants on behalf of the Ontario Federation  
20 of Anglers & Hunters and NOTOA, and too many things  
21 seem to be dropping between the cracks with respect to  
22 the Coalition's case.

23 It's just not worthwhile to blame other  
24 parties or individuals for things that go wrong. I  
25 understand Mr. Hanna's in a probably difficult

1 position, he's representing two clients, I assume he  
2 doesn't meet with his clients every day, he needs  
3 decisions from them, but at the same time the Board  
4 needs to have in front of it one individual who is  
5 responsible and accepts responsibility for anything  
6 that goes wrong in this case, and we hope that in the  
7 future there won't be any passing off of any  
8 responsibility as to whether certain deadlines have  
9 been set or met or any other matters pertaining to the  
10 management of the Coalition's case.

11 Our next question has to do with the  
12 development of the Coalition's witness statements. The  
13 Board wants to know whether the witnesses are writing  
14 the witness statements for the Coalition and whether  
15 there will be any problems with other witness  
16 statements of a nature that seemed to have arisen with  
17 witness panel 1.

18 If there are going to be any problems,  
19 tell the Board now, we don't want to go through this  
20 kind of business with other witness statements. We  
21 want to make sure that authorship and agreement of the  
22 witnesses with respect to the Coalition's position is  
23 very clear and we want to hear from the Coalition today  
24 a very firm reassurance that any problems that have  
25 been encountered with this first panel will not recur.

1                   The Board would like to hear now from the  
2                   Coalition and if someone is speaking, introduce  
3                   yourselves. I see two new faces in front of me and are  
4                   you both representing the Coalition?

5                   MR. O'LEARY: Madam Chair, my name is  
6                   Dennis O'Leary and I'm a lawyer with the firm of  
7                   Cassels, Brock and we've been retained by the Coalition  
8                   with respect to Panel 1 and I'll expend on that in a  
9                   moment.

10                  To my right is Mr. John Tidball who is  
11                  from the firm of Miller, Thomson and he's been retained  
12                  by Ms. Judy Simon.

13                  If I can start simply by giving you an  
14                  update on what is happening in respect of panel 1, the  
15                  Coalition is asking today for the Board's leave to  
16                  withdraw Judy Simon's witness statement which I believe  
17                  was filed October 21st, 1991.

18                  Mr. Tidball and I have discussed earlier  
19                  the extent to which we thought it would be of  
20                  assistance to the Board for us to go into the specifics  
21                  of the allegations that are going back and forth.  
22                  Suffice it to say there are substantive differences  
23                  between Ms. Simon and the Coalition where my firm and  
24                  myself recommended to the Coalition that Ms. Simon  
25                  should not be used as a witness. We felt it would be

1 of no value to the Coalition, we felt that she would be  
2 of limited or no value to other parties and, most  
3 importantly, to the Board in this process.

4 It's unfortunate that I am here today to  
5 have to make these submissions and I understand,  
6 particularly in a hearing that's gone on at length,  
7 some might say ad nauseum, but I appreciate the concern  
8 of all parties and particularly the Board. But we are  
9 faced with what can only be described as extraordinary  
10 circumstances.

11 I would like to think I look a little  
12 younger than I am, but I have had a few years in  
13 administrative hearings of this nature, as have other  
14 members of my firm, and this is the first time that  
15 many of us can recall circumstances arising where  
16 basically at the 11th hour a request like this is being  
17 made that were we to proceed today with our evidence  
18 and we have no longer a witness which can be present,  
19 and both Mr. Tidball and myself are in agreement that  
20 for all of the various reasons it's not wise that Ms.  
21 Simon appear as a witness for the Coalition.

22 In respect of what is Coalition is  
23 asking, simply two things. The first is that Ms.  
24 Simon's evidence be withdrawn and that, secondly, today  
25 the Board not preclude it from presenting evidence of



1       that nature in respect to the subjects and material she  
2       was proposing to address at some point, perhaps during  
3       the balance of the Coalition's testimony, during I  
4       believe it's 10 or nine weeks said aside until near the  
5       end of March, or perhaps if it's virtually impossible  
6       to find an alternate witness by that time, at some  
7       convenient time thereafter.

8               The extent of my firm's retainer is in  
9       respect only of panel 1. We were retained on the 23rd  
10      of December formally. There had been some discussions  
11      several days before that. We were retained  
12      specifically to attempt to oversee the preparation and  
13      the final preparation of Ms. Simon's evidence and that  
14      meant the responses to the interrogatories, and to see  
15      that she was here today.

16             I am sad and inform you that  
17      unfortunately we have not been able to resolve concerns  
18      that Ms. Simon had in respect to the witness statement  
19      that was filed in terms of its substance and that as a  
20      result we felt it would not be appropriate for her to  
21      appear as a witness.

22             I must say that extraordinary efforts  
23      were made by both Mr. Beram, who I was on the phone,  
24      and much to his chagrin, over the course of the  
25      holidays and he was of great assistance to us, Mr.

1       Tidball worked with myself and my associate Mr. McGowan  
2       in attempting to see that any changes - and Ms. Simon  
3       is entitled to make changes to her witness statement,  
4       of course, no question - that they would be done in a  
5       timely fashion, that the concerns of other parties  
6       would be met, that the responses to the interrogatories  
7       would be filed so that they would have sufficient  
8       opportunity to prepare for cross-examination.

9                       We attempted to work all through the  
10       holidays, we spent long days and weekends and Christmas  
11       Eve and New Year's day, but unfortunately we are here  
12       today.

13                      Now, the extraordinary circumstance, if I  
14       can boil it down to one general problem, is the fact  
15       that ultimately the substantial changes to the witness  
16       statement were not drafted and given to the Coalition  
17       or myself before December 23rd. That was the -- was it  
18       the 23rd? No, it was just last Monday, so that's the  
19       30th, I'm sorry, it's December 30th. So last Monday  
20       morning was the first chance that I had had to see the  
21       substantial changes.

22                      There had been some other more modest  
23       changes done in an earlier draft with about 60 per cent  
24       of the questions simply left blank, and we were advised  
25       that they would be completed on the Sunday, and I did

1 receive them on the Monday. So the extraordinary  
2 situation that we were faced in is to sit down with our  
3 witness and to try and understand the nature of her  
4 concerns in terms of the evidence and that wasn't  
5 possible until she had actually formulated that.

6 Despite the lateness of that, I attempted  
7 to indicate to Mr. Beram and to other parties that I  
8 spoke with, that we would make every effort to see that  
9 a revised witness statement would be filed, that  
10 responses to the interrogatories would be completed and  
11 filed, and that all parties would still have a chance  
12 to at least have a day or so to prepare their  
13 cross-examinations. We wanted to proceed today, and  
14 that's what our firm was retained for, not only to make  
15 sure that all the final deadlines were met, but also to  
16 see that the evidence was put in in-chief.

17 I would have been here today to lead the  
18 examination-in-chief and to be with the panel during  
19 the cross-examination. That is still the retainer.

20 If this Board is so disposed to grant the  
21 Coalition leave at some point to bring in an  
22 alternative witness to give evidence on this important  
23 matter and to allow examination both in-chief and  
24 cross-examination, my firm has been retained and either  
25 myself or one of my partners or associates will be here

1 to assist and hopefully expedite matters.

2 Our retainer is to also assist in the  
3 retention of an alternate witness. There are several  
4 names that have come to mind, they are being actively  
5 pursued. We gave several recommendations, they are  
6 being actively pursued, and when we have had an  
7 opportunity to determine their availability and their  
8 estimates of the amount of time required for them to  
9 prepare their witness statements, I propose to make a  
10 formal application to this Board for leave in respect  
11 of that witness panel.

12 So the Coalition is respectfully  
13 requesting today that the statement of Ms. Simon be  
14 withdrawn and that the Board simply not rule out the  
15 possibility that evidence of this nature be introduced  
16 through another witness at a convenient point during  
17 the hearing.

18 MADAM CHAIR: Excuse me, Mr. O'Leary.

19 MR. O'LEARY: Certainly.

20 MADAM CHAIR: The Board is interested in  
21 knowing why the circumstances became extraordinary when  
22 the witness statement was filed October 21st? Why did  
23 the witness statement become a problem from the end of  
24 November until now?

25 MR. O'LEARY: I can't speak for the views



1 and the thoughts of the witness. The important point  
2 from the Coalition's point of view, which became  
3 self-evident from our discussions with the witness, was  
4 that she was no longer prepared to stand by the witness  
5 statement as originally filed, and that the changes she  
6 was proposing - and I had always hoped that they would  
7 be of such a nature that it would still be of  
8 assistance and value both to the hearing and to the  
9 Coalition - but they proved to be much more substantial  
10 than that.

11 MADAM CHAIR: Well, did Ms. Simon change  
12 her mind about her witness statement?

13 MR. O'LEARY: Well, the changes were such  
14 that the extent to which her evidence would have been  
15 of assistance, if I can characterize it as: She was no  
16 longer prepared to give opinion evidence, it was no  
17 longer we felt of value to the Board when this witness  
18 will no longer give opinion evidence. That's the  
19 Coalition's point of view.

20 MR. MARTEL: But who wrote the original  
21 witness statement?

22 MR. O'LEARY: Well, sir, as all hearings  
23 and council that I have been involved in -- I'm trying  
24 to answer your question.

25 MR. MARTEL: Just answer it directly

1       then.

2                   MR. O'LEARY:  --I'm trying to set the  
3       appropriate framework, there always is assistance of  
4       counsel or the staff that are advising and assisting  
5       the witnesses, but it was a collaboration between  
6       members of the Coalition and Ms. Simon, but they were  
7       working hand-in-hand.  They spent many hours together  
8       helping get the wording as precise as possible, and it  
9       is her -- unequivocally it is her witness statement,  
10      there's no question about that, all the way along.

11                  MR. MARTEL:  Well then --

12                  MR. O'LEARY:  I know there's been  
13      representations made --

14                  MR. MARTEL:  No, no, no, never mind the  
15      representations.  I read the witness statement, and if  
16      somebody wrote a witness statement and signed it in  
17      October, what we're being asked here is to accept that  
18      two months later that witness statement is no longer  
19      valid and it should be withdrawn and that the person  
20      who signed that witness statement isn't prepared to  
21      give, and I think the words you used were, opinion  
22      evidence any longer.

23                  And maybe I don't understand these things  
24      very well, but I'm having difficulty, quite frankly, in  
25      someone putting forth a statement, signing it,

1 presenting it to the Board and then at 11:59 deciding  
2 it's no longer valid and that the party that has hired  
3 her to do it decides that maybe she shouldn't be  
4 brought forward.

5 I mean, that is a large step, a quantum  
6 step, if I might say it.

7 MR. O'LEARY: Admittedly.

8 MR. MARTEL: Right. And we would just  
9 like to know precisely what happened.

10 MR. O'LEARY: What transpired between  
11 October 21st and the date that Ms. Simon first  
12 indicated to both the Board and subsequently the  
13 Coalition is a source of concern to us as well.

14 MR. MARTEL: But I must -- I hate to  
15 interrupt, but that was first indicated to our staff as  
16 merely errata that was going to be corrected. Now,  
17 errata is errata, it's a typographical error. That was  
18 the first bit of good news we heard.

19 That errata has now become very  
20 substantive differences, and maybe you can explain to  
21 me the difference between errata and substantive  
22 differences which don't allow a witness to be called  
23 forward on the starting date?

24 MR. O'LEARY: I don't know what  
25 representations were made to the Board, sir, but I can

1 tell you, I do like to think I know the difference  
2 between errata and what I saw as the final draft we  
3 received from Ms. Simon last week did not amount to  
4 errata. Until, however, someone could actually look at  
5 those drafts, I don't know how anyone could make the  
6 determination on whether it's errata or not.

7 MR. MARTEL: I'll tell you what our staff  
8 was advised.

9 MR. O'LEARY: Sir, every attempt was  
10 made, as I understand prior to our retainer - and I'd  
11 like to think after our retainer as well - to live with  
12 the today as the beginning day for this panel.

13 And, as many times happens, there are  
14 small changes that have to be made in a witness  
15 statement, sometimes there's improvements that a  
16 witness would like to put in, and that's perfectly  
17 normal and acceptable.

18 This is not errata, what was given to us  
19 last Monday, and it may be unfortunate that the word  
20 errata was used, perhaps there was some optimism that  
21 that's all it would amount to, but the point of it was  
22 not to mislead or deceive anyone, the point was to try  
23 to get the case started today.

24 And that's the sincerest intention of the  
25 Coalition was to start today. That's why they retained



1 us. They had no budget for the amount of time that my  
2 firm has spent on this now, this is -- they're digging  
3 deeper into their pockets than they had ever  
4 anticipated. They had hoped start today without our  
5 involvement, but when there appeared to be some  
6 problems on the horizon, they retained the firm and,  
7 unfortunately, we have not been successful in bringing  
8 forth the evidence here today.

9 But there are some outstanding problems  
10 between the Coalition and Ms. Simon. I advised Board  
11 counsel and I will state again today that it is our  
12 recommendation that litigation be considered, and for  
13 that reason there are a number of specific matters that  
14 I do not feel that it is in our client's best interest  
15 to go into the particulars of this particular time.

16 But the important facts remain, I  
17 restfully submit - for the purposes of today and  
18 ultimately any application for leave to proceed at  
19 another time with the alternate witness - the important  
20 facts remain that the Coalition, notwithstanding that  
21 it is, up until a short while ago, its witness, the  
22 Coalition did not have the specifics of the changes to  
23 the witness statement until last Monday, and we've made  
24 every attempt to try and - up until that point and then  
25 for the day after that - to see if we just

1       misunderstood what the changes amounted to.

2                       The fundamental change as we view -- as  
3       the Coalition contracted for, a fundamental change in  
4       the nature of her evidence, and the Coalition does not  
5       feel it would be of any value.  If Ms. Simon was to  
6       proceed, it will then have spent a substantial sum of  
7       monies on a witness that is not viewed as having the  
8       value that she should have, and it would then be  
9       precluded from trying to find an alternate witness.

10                      It's not the best option, but it is the  
11       only one that was ultimately available.  The best  
12       option, of course, would have been to start today, if  
13       that was possible, and every effort was made in that  
14       regard.

15                      I don't know if that answers the first  
16       question.

17                      MADAM CHAIR:  Mr. O'Leary, again the  
18       Board will repeat that it's not interested in the  
19       particulars of the contractual arrangement that the  
20       Coalition had with Ms. Simon as its witness or  
21       whatever, our concern is that a situation developed  
22       that we had a witness statement in our possession from  
23       October 21st in preparation for hearing evidence today.  
24       Here we are today; no witness, no evidence.

25                      We need some reassurance from the

1 Coalition that when we show up a week today we're going  
2 to have a witness, we're going to have evidence, and  
3 that that will continue for the remaining eight witness  
4 panels.

5 MR. O'LEARY: I did plan to address that,  
6 I was simply trying to answer your first two questions  
7 and they were basically what's happening with respect  
8 to witness panel No. 1 and, secondly, what's the extent  
9 of our retainer. I hope I have answered those two  
10 questions.

11 MADAM CHAIR: Yes, you have, and the  
12 Board won't make any decision today about whether or  
13 not it would give leave for the Coalition to present  
14 the same evidence with a different witness, or evidence  
15 akin to that with a different witness at some time in  
16 the future and we will certainly keep an open mind  
17 about it.

18 We would want to hear arguments from the  
19 Coalition about why the Board should do that. We have  
20 very grave scheduling problems.

21 MR. O'LEARY: I understand.

22 MADAM CHAIR: And so we won't be making a  
23 decision about that today.

24 MR. O'LEARY: Thank you.

25 MADAM CHAIR: And we would certainly

1 caution the Coalition not to begin, not to hire another  
2 witness or begin developing that evidence without--

3 MR. O'LEARY: Seeking leave.

4 MADAM CHAIR: --seeking leave.

5 MR. O'LEARY: Thank you, Madam Chair.

6 The question sir, Mr. Martel, that you  
7 asked: Am I aware of the circumstances which gave rise  
8 to -- I presume what you're saying, the delay between  
9 October 21st and the date at which somebody was told  
10 that the changes to the witness statement are required.

11 I can't speak to that because I was  
12 neither retained at that time nor have I had discussion  
13 with Ms. Simon, and I don't think that that would  
14 necessarily be of much assistance, particularly in  
15 light of what may ultimately go on to other matters in  
16 other forums.

17 But the extraordinary circumstances, from  
18 the Coalition's point of view, is as stated in, I  
19 believe in Mr. Tidball's letter, he confirms that the  
20 Coalition is told at a date in December that the  
21 substantive changes are required, and that is, as you  
22 put it, 11:59 from their point of view, and that's the  
23 extraordinary circumstances.

24 That's when the Coalition decided, we  
25 better get some additional help, perhaps if we bring in



1 counsel that might reassure the witness and she would  
2 feel comfortable with proceeding.

3 That's the extraordinary circumstance,  
4 sir, that I respectfully submit gives rise to what will  
5 ultimately be raised in any application to seek another  
6 opportunity to introduce this evidence.

7 Mr. Tidball may have some comments in  
8 respect of that. I don't know whether you'd like to  
9 hear the balance of my submissions, or would you rather  
10 deal with each question one at a time and hear  
11 submissions from other parties.

12 MADAM CHAIR: We will hear the rest of  
13 your submissions, Mr. O'Leary.

14 MR. O'LEARY: Thank you. Your third  
15 question involves an inquiry about a letter from Mr. Ed  
16 Hanna to the Board. As I understand, from the  
17 circumstances that gave rise to it, there was a belief  
18 by Mr. Hanna that there was some understanding with the  
19 the Board, it wasn't intended, and perhaps the wording  
20 was unwise, to suggest that Mr. Pascoe had somehow made  
21 an agreement.

22 Mr. Hanna is not so presumptuous to  
23 conclude that the hearing coordinator can grant  
24 extensions, that's clearly a prerogative only of the  
25 Board, but there was a belief that there was an

1 extension until December 24th. There was never any  
2 intention to mislead or to cause any confusion in that  
3 respect, and if that is the view that is taken in  
4 hindsight, that's unfortunate but, with respect, it's  
5 erroneous.

6 Mr. Hanna has always been operating in  
7 the utmost good faith and that letter was never  
8 intended in any other light other than he was operating  
9 on the assumption that there had been some agreement or  
10 understanding that the Coalition would have until the  
11 24th to file its responses to the interrogatories.

12 Your fourth question, Madam Chair, has  
13 been to some extent responded to already and, that is,  
14 who is writing the witness statements. I can tell you  
15 unequivocally that the witnesses that execute those  
16 witness statements adopt them as their own. They are  
17 their witness statements, certainly they look for  
18 assistance from staff and, if counsel is involved, I  
19 would be lacking in my duties if I did not assist a  
20 witness in the preparation of their statements.

21 One of the reasons why counsel was  
22 involved is to help be more precise in the wording  
23 used, to direct the witness statement to the issues at  
24 hand, but it is the witness statements and there's no  
25 question of that, and the witness statements that have

1       been filed in respect of all of the other parties are  
2       their witness statements.

3                   So there is no suggestion, there's no  
4       threat, there's no perception that any other witness is  
5       going to follow the route that Ms. Simon has felt  
6       encumbent upon herself.

7                   In terms of the your question as to what,  
8       or whether today's extraordinary circumstances have any  
9       reflection upon the balance of the case, I can tell you  
10      that, no, it doesn't, there is no connection. There's  
11      no -- what has happened with respect to Ms. Simon  
12      should not reflect upon the balance of the case. The  
13      Coalition intends to proceed at the scheduled time next  
14      Monday with panel 2.

15                  It would have preferred to have had the  
16      panel that it wanted to go up first because it flows  
17      logically in terms of the presentation of its case for  
18      this panel to go now, but it's not going to ask for an  
19      adjournment for its entire case. It's ready to proceed  
20      next Monday.

21                  As I understand matters, the witness  
22      statements in respect of the other panels have been  
23      filed in a timely fashion and the interrogatory  
24      responses have also been filed in a timely fashion.

25                  So we are faced, at least so far as panel

1       1, in my respectful submission, in an extraordinary  
2       situation and it's exceptional in terms of the other  
3       panels, it's not something that there's any sign of it  
4       being repeated.

5                       Unless I have missed something, I believe  
6       those are my responses to your questions, Madam Chair.  
7       Again, I would simply indicate today we are only  
8       seeking an order withdrawing the witness statement of  
9       Ms. Simon.

10                      Thank you.

11                      MADAM CHAIR: Thank you, Mr. O'Leary.

12                      Mr. Tidball, did you have something to  
13       say to the Board?

14                      MR. TIDBALL: Yes. Thank you, Madam  
15       Chair.

16                      I have a very few remarks. I had hoped  
17       not to say anything, but a couple of matters have  
18       arisen. The Board will appreciate that with respect to  
19       my retainer, I'm really not here to even assist you in  
20       the inquiry that you're carrying out in a general  
21       fashion, however, you will appreciate that Ms. Simon is  
22       a professional, she has appeared before this Board in  
23       the past, not on this hearing but in other hearings,  
24       and assumes that she may do so in the future and her  
25       reputation is one of the things that she does have at



1 stake here and she's asked me to attend and to deal  
2 with anything that might arise.

3 And if I might deal with just a couple of  
4 matters. In his response to your first question Mr.  
5 O'Leary put to you the proposition that the evidence  
6 that would now be put by Ms. Simon would be of no use  
7 to the Coalition or to any other party or to the Board  
8 itself. I would simply just put on the record that I  
9 wouldn't accept that submission and I would make the  
10 opposite submission that, in fact, Ms. Simon's evidence  
11 might be quite interesting to the Board.

12 With respect to her witness statement, it  
13 would seem all of this discussion we've been having  
14 concerns only the question and answer part of it which  
15 is found at the beginning. What I'll call, for the  
16 sake of argument, her report which is found in one of  
17 the tabs at the back of it she still stands by  
18 completely and still thinks that that is something that  
19 might be of some interest and assistance to the Board  
20 but understands it's kind of caught in with this  
21 witness statement and certainly supports the  
22 Coalition's request to withdraw the whole thing.

23 Simply with respect to when certain  
24 things were brought to the attention of the Coalition,  
25 to go to your question, Mr. Martel.

1                   I said in my letter to the Board, or to  
2                   Mr. Beram on Friday that Ms. Simon informed the  
3                   Coalition in early December that there were problems  
4                   with her witness statement and that she would like to  
5                   make revisions. That, of course, is fairly precisely  
6                   when she first received it. She did not receive a copy  
7                   of the witness statement, she's not exactly sure if it  
8                   was late November or early December. From the day she  
9                   signed the last page of it on October 21st until then  
10                  she had not seen it, and she actually regrets deeply I  
11                  guess at this point that she did not, as the first  
12                  matter, sit down and do the thing that we ended up  
13                  trying to deal with last week.

14                  What she was trying to do after she  
15                  received the interrogatories was answer the  
16                  interrogatories and it became apparent to her that many  
17                  of the questions in the interrogatories went to issues  
18                  in her witness statement that she did not agree with  
19                  and she ended up writing answers to interrogatories  
20                  that started with: That shouldn't say that, it should  
21                  say something else.

22                  MR. MARTEL: Yes, but that's the  
23                  difficulty I'm having. How did we arrive at this point  
24                  that there is a report prepared, there are a series of  
25                  questions put forth by the Coalition, there are answers

1 given prior to reviewing that, there is a statement  
2 signed as being acceptable, and now we're at the stage  
3 where, well: The questions and the answers which I  
4 agreed to because I signed it don't reflect what, in  
5 fact, I said.

6 Now, how did we reach that point?

7 MR. TIDBALL: Well, we've been trying to  
8 stay away from the specifics, Mr. Martel, but I'm  
9 prepared to go into them.

10 MR. MARTEL: I'm not dealing in  
11 specifics, I'm not dealing in specifics, but I'm  
12 dealing in the real world as I can perceive it from  
13 sitting back and watching it.

14 A witness statement was signed in October  
15 and questions went back and forth with the help of  
16 counsel, but somewhere in there someone agreed that  
17 that was their statement.

18 Now, I don't know what she thought she  
19 was signing and I don't know where the changes came,  
20 but I do know that today we were supposed to start, and  
21 there's such a conflict in what was thought was agreed  
22 to, I think, that we can't proceed.

23 Now, I just want to know how that can  
24 happen.

25 MR. TIDBALL: Well, it's a very

1       legitimate question, sir, and I should preface this by  
2       saying that Ms. Simon has asked me to convey her  
3       deepest apologies to the Board for this because it's  
4       not something that she's particularly pleased happened.

5               I mean, the fact of the matter is she did  
6       not review the witness statement before she signed it,  
7       and having said that, I'm sure that she would never do  
8       that again.

9               MR. MARTEL:   Okay.   But who drafted the  
10      answers then?

11              MR. TIDBALL:   Well --

12              MR. MARTEL:   I mean, those answers got  
13      there somehow.

14              MR. TIDBALL:   As I understand it, sir,  
15      there were questions and answers put to her.   It isn't  
16      as it appears where -- it isn't that a set of questions  
17      were put to her and she simply handed in her answers.

18              Someone had evidently decided that a  
19      question and answer format was appropriate and  
20      questions and answers were put to her.   This, as in  
21      many witness statements that I've ever dealt with, a  
22      lot of times you're doing them at the last minute - and  
23      I don't ascribe any particular motives to anybody in all  
24      of this, I think everybody was acting in everybody's  
25      best interest - things got put into the final version



1       that are not her views.

2                   There are several categories. I would  
3       say there are several categories. First of all, Ms.  
4       Simon - who unfortunately you probably will not get to  
5       meet - is a fairly precise person and there were  
6       changes that, frankly, all of us could have lived with  
7       in terms of the witness statement and if the witness  
8       was called she could have explained and said: I could  
9       have said that better. There is that category.

10                   There is category of changes that are -  
11       leaving aside typos and there were those - there were  
12       changes where she was under the impression that a  
13       certain answer was going to get changed and it wasn't.  
14       There's that sort of change. There are changes that  
15       substantively change the answer to a particular  
16       question.

17                   The witness was ill at the time and - I  
18       don't know how far we need to go on this - the witness  
19       was ill at the time, she regrets deeply that this  
20       happened but it did, and the short answer to this  
21       question is that the reason this happened is that she  
22       did not have the opportunity to review the witness  
23       statement before it was filed.

24                   There was not an opportunity to get an  
25       extension and, given the Board's procedural direction

1 in September, I can appreciate -- fully appreciate why  
2 that has not seemed to be possible, and she went along  
3 with signing something that she had not seen and she  
4 regrets that.

5 MADAM CHAIR: Do you have anything else  
6 to say, Mr. Tidball?

7 MR. TIDBALL: Just very briefly, and I  
8 think it flows from what I just said. Mr. Martel, sir,  
9 you asked two questions actually: Why didn't this come  
10 about earlier, and I think that I dealt with that,  
11 simply because from October 21st to early December Ms.  
12 Simon did not have a copy of her witness statement.

13 And, secondly, did she just simply  
14 changed her mind? Except with respect to certain, as I  
15 say, matters where she would have preferred to say  
16 things differently, which we could have dealt with  
17 anyway, I would say, no.

18 There were things in there that she never  
19 would have agreed with and that were not her views,  
20 that went beyond her expertise, et cetera, and it all  
21 goes to -- the root of the whole thing is she ought not  
22 to have signed it, but she did and, you know, you're  
23 stuck with the result of that and we are where we are  
24 today.

25 I think those are all my submissions,

1 subject to any questions that you may have.

2 MADAM CHAIR: Thank you for now, Mr.  
3 Tidball.

4 Do any of the other parties want to  
5 comment on any of this, or do you have any questions to  
6 put to the Coalition with respect to this matter or  
7 related issues?

8 MS. SWENARCHUK: Madam Chair, I merely  
9 wanted to say now, not on behalf of Forests for  
10 Tomorrow though, on behalf of the Canadian  
11 Environmental Law Association, that we view this entire  
12 matter with some concern as well.

13 I want to thank Ms. Simon and Mr. Tidball  
14 for filing the letter that they sent to all parties on  
15 Friday which clarified the question of Ms. Simon's  
16 membership on the CELA Board and reminded us, if we  
17 needed a reminder. In fact, clearly apparent from the  
18 beginning of this matter since it's in fact on her CV  
19 filed with the witness statement.

20 MADAM CHAIR: Ms. Swenarchuk, while  
21 you're standing on behalf of CELA, there was something  
22 mentioned in a letter with respect to a conflict of  
23 interest.

24 MS. SWENARCHUK: Yes, that's precisely  
25 what I mean.

1                   MADAM CHAIR: And are you saying that Ms.  
2 Simon's conflict of interest has nothing to do with  
3 respect to Forests for Tomorrow, with respect to her  
4 directorship of CELA and vis-a-vis appearing as a  
5 witness on behalf of the Coalition?

6                   MS. SWENARCHUK: We do not take the  
7 position before this Board that there's a conflict  
8 there.

9                   MADAM CHAIR: Mr. O'Leary, I don't think  
10 there is probably any more you can say to the Board  
11 about this matter.

12                  MR. O'LEARY: With your permission, Madam  
13 Chair, may I speak briefly in reply to what Mr. Tidball  
14 and counsel for FFT and CELA.

15                  MADAM CHAIR: Go ahead.

16                  MR. O'LEARY: Very, very brief. It seems  
17 important to state for the record - not getting into  
18 the particulars - I don't agree with what Mr. Tidball  
19 has stated in terms of the value of the evidence, but  
20 that being said I go one step further.

21                  The report which is contained in the  
22 witness statement, which is filed is respectfully  
23 submitted, should be withdrawn for several reasons.

24                  I'm sure my other friends behind me will  
25 argue that they don't think it's fair for a report to



1 be filed when they had no opportunity to examine that,  
2 but more importantly from the Coalition's point of  
3 view, it would preclude or at least prejudice any  
4 alternate witness was to attend because that witness  
5 would then be cross-examined on somebody else's report.  
6 So the value of it is clearly nil.

7 In respect of what transpired in regard  
8 to the witness statement and how it was prepared, the  
9 characterizations are rejected that Mr. Tidball has  
10 made in that regard. There is no impropriety on the  
11 Coalition's part in respect of the preparation of that  
12 statement.

13 In respect of whether or not the  
14 Coalition knew that Ms. Simon was a director of CELA,  
15 there's no denial of that, and that's -- from the  
16 Coalition's point of view, it was not perceived there  
17 was a conflict, but it was not their minds that was at  
18 issue here, the concern arose with Ms. Simon.

19 And ultimately if there's a concern --  
20 if, as counsel to the Coalition, I was to say: Oh, go  
21 ahead with a witness that feels that there might be an  
22 appearance of an conflict, I think I would be remiss in  
23 terms of my duties to that client.

24 So that was one of the areas that we had  
25 great concern about the ability and the willingness of

1       that witness, Ms. Simon, to go further than she  
2       was apparently prepared to go in terms of any evidence  
3       she was to give.

4                       Those are simply my short reply, Madam  
5       Chair.

6                       MADAM CHAIR: Well, the Board is still  
7       left with the need for reassurance that we won't find  
8       ourselves in this type of situation for the remainder  
9       of the Coalition's case and also some reassurance that  
10      these last minute -- that someone will take  
11      responsibility for attempting to make sure these sorts  
12      of problems don't arise.

13                      Mr. Hanna's here. I don't know if you  
14      want to say anything to the Board today, Mr. Hanna, but  
15      you can understand the position we're in.

16                      MR. O'LEARY: Madam Chair, we discussed  
17      that prior to now and my advice to Mr. Hanna was that  
18      when you have retained counsel it's appropriate that  
19      any communications with the Board take place through  
20      counsel.

21                      I appreciate that our retainer is only  
22      with respect to panel 1 and so it's somewhat unusual in  
23      that circumstance. Perhaps a means of proceeding that  
24      might be a fairer accommodation would be if you have  
25      certain questions, then I would be able to at least

1 speak to Mr. Hanna, then I can communicate a response  
2 to you perhaps following a momentary adjournment or  
3 recess.

4 Madam Chair, Mr. Hanna has indicated that  
5 he is prepared to respond to the question. I simply  
6 wanted an opportunity to ask him if he was so inclined,  
7 and he is.

8 MADAM CHAIR: Mr. Hanna, the question  
9 simply is: Is the Coalition -- what kind of reassurance  
10 can it give the Board that the Board can rely on that  
11 the remaining eight panels will proceed as scheduled?

12 MR. HANNA: Madam Chair, we have not  
13 received any communication of the sort we received from  
14 Ms. Simon from any other witnesses. We have submitted  
15 all of the witness statements. They have been  
16 submitted on time.

17 We are preparing interrogatories. They  
18 have been going in on time. At this time there is  
19 nothing, that I know of, that would suggest that the  
20 extraordinary circumstances that have arisen in Ms.  
21 Simon's case will arise with any other panels. That's  
22 the best I can tell you at this time.

23 MADAM CHAIR: Okay. Thank you, Mr.  
24 Hanna.

25 The Board certainly isn't going to

1 prevent you withdrawing witness statement No. 1, it's  
2 your case and you can put it in front of us as you  
3 wish, and none of the parties has any objections, so  
4 far as we can tell today, so certainly this will be the  
5 end of the matter with respect to witness panel No. 1's  
6 evidence as represented by Ms. Simon, as far as the  
7 Board is concerned.

8 If you intend to seek leave of the Board  
9 with respect to some substitute for witness panel 1,  
10 again, the Board would caution you not to prepare any  
11 of that evidence in advance and not to invest any of  
12 your money or time or effort into that evidence.

13 The Board will need to hear something  
14 that would persuade it to give leave for listening to  
15 more evidence on that topic.

16 If there's nothing else today, then we  
17 will adjourn the procedural discussion.

18 And we are going to be scoping witness  
19 panel No. 2 today and witness panel No. 3 is  
20 scheduled -- a scoping session was scheduled on  
21 Wednesday at four o'clock. That's still a convenient  
22 time for the Board, but we're in your hands, Mr. Hanna,  
23 and the other parties, if you wanted to change the time  
24 on that, seeing as we are not going to be in session to  
25 hear evidence we can make it earlier or we can leave it



1 at four o'clock.

2 MR. HANNA: Madam Chair, if the other  
3 parties are prepared to proceed, I would certainly be  
4 prepared to do the scoping for 3 also today. I'm happy  
5 also to leave it on Wednesday, whatever is most  
6 convenient.

7 MADAM CHAIR: Are the parties prepared to  
8 scope panel 3 today as well?

9 MS. SEABORN: Madam Chair, I don't have  
10 my statement of issues with me. I believe it's being  
11 sent out to the parties right now, but I'm prepared to  
12 go ahead with the material, if other people are.

13 MADAM CHAIR: Mr. Freidin?

14 MR. FREIDIN: I'm content to proceed as  
15 well.

16 MADAM CHAIR: Mr. Hunter, you are not  
17 cross-examining; are you?

18 MR. HUNTER: Well, the situation I am in  
19 is, Michael Baeder is handling these panels because I  
20 was beginning to reorganize these schedules, so I think  
21 you should proceed and then I'll have Mr. Baeder  
22 contact one of your counsel, either Mr. Freidin or Ms.  
23 Swenarchuk with respect to scoping panels 2 and 3.

24 I'm not prepared to go ahead with that  
25 today, I'm unprepared to deal with those issues, but I

1 think the Board should proceed.

2 MADAM CHAIR: All right, Mr. Hunter.

3 Well, we have got to organization -- find  
4 our material. Why don't we take a half hour break and  
5 be back at 2:30 and we will do the scoping sessions for  
6 both panels.

7 ---Recess at 2:00 p.m.

8 ---On resuming at 2:35 p.m.

9 MADAM CHAIR: Please be seated.

10 Let's begin with witness statement No. 2  
11 for the Coalition which is entitled Essential  
12 Requirements of Public Consultation.

13 I understand that there will be three  
14 parties cross-examining, the Ministry of Natural  
15 Resources, the Ministry of the Environment and Forests  
16 for Tomorrow.

17 MS. SWENARCHUK: (nodding affirmatively)

18 MADAM CHAIR: The Board's first comment  
19 about this witness statement is a remark that we saw in  
20 Ms. Swenarchuk's statement of issues where she has  
21 stated her intention to cross-examine on the  
22 qualifications of witnesses to express opinion.

23 Ms. Swenarchuk, what exactly was that --  
24 which witness were you going to cross-examine and what  
25 is this about? And the only reason I ask this is

1 because one of the witnesses is Nicholas Heseltine --  
2 Heseltine, Mr. Hanna?

3 MR. HANNA: Yes.

4 MADAM CHAIR: ---Heseltine, who is with  
5 forestry Canada and will be giving evidence about the  
6 surveys done for Forestry Canada, and I wondered if you  
7 were going to be revisiting the issue we've talked  
8 about on and off at the hearing and that was the  
9 subject of survey information.

10 MS. SWENARCHUK: No, that was not  
11 planned. This was done during the Christmas holidays,  
12 it's a little hard for me to remember, but I think more  
13 my question had to go to the experience levels of the  
14 other two witnesses with regard to something in the  
15 witness statement.

16 MADAM CHAIR: All right. All right.  
17 Then the Board takes it we won't have to get into a big  
18 song and dance about the results of the survey  
19 information, and we've noticed from the Ministry of  
20 Natural Resources' statements of issues that they will  
21 be addressing the significance the Board can put on  
22 those results, but we're not going to get into some  
23 kind of a mixup about whether or not Mr. Heseltine can  
24 testify as to how the survey was conducted.

25 MR. FREIDIN: No.

1 MADAM CHAIR: Okay.

2 MR. FREIDIN: We will -- we may ask some  
3 questions about his expertise and his experience being  
4 involved in that sort of thing.

5 MADAM CHAIR: Yes.

6 MR. FREIDIN: One thing I note, the  
7 Industry are not represented at the scoping session,  
8 but I believe one of the issues which they raise is the  
9 qualifications and expertise of the witnesses. It may  
10 be - and if you look under additional issues, 5(b),  
11 admissibility, weight, accuracy and validity of public  
12 opinion polls in general.

13 And the poll is referred to in this  
14 witness statement in particular. You will recall we  
15 argued that very issue when Mr. Hanna attempted to use  
16 I think this poll result in cross-examination and the  
17 Board is aware of its ruling.

18 MADAM CHAIR: Yes.

19 MR. FREIDIN: It may very well be that an  
20 issue may arise as to whether or not Mr. Heseltine,  
21 notwithstanding his employment by Forestry Canada, is  
22 the person who has the expertise to overcome the legal  
23 problem upon which the Board based its earlier ruling,  
24 and that was, that the survey was inadmissible. You  
25 will recall --



1                   MADAM CHAIR: Yes, I recall the ruling  
2                   very well, Mr. Freidin. It's the Board's intention not  
3                   to keep going around that track.

4                   Could you please do the Board a favour,  
5                   and if it's Mr. Cassidy's intention to argue that Mr.  
6                   Heseltine should not be able to give any evidence  
7                   whatsoever about the survey that was done for Forestry  
8                   Canada, that he give notice to the Board, and the Board  
9                   will want the parties to meet with Mr. Beram and see  
10                  what can be sorted out before we waste time in  
11                  cross-examination on this matter, or at least that the  
12                  Board is apprised - if that's going to be Mr. Cassidy's  
13                  objection - and we'll take care of that at the end of  
14                  the day.

15                  You know that the hours are very -- we've  
16                  got a tight schedule for cross-examining Mr. Hanna's  
17                  witnesses and I don't want to take up 9:00 to 4:00 with  
18                  that issue. If this is going to be Mr. Cassidy's  
19                  concern and he's going to challenge Mr. Heseltine's  
20                  qualifications to give this evidence, then we want to  
21                  know as soon as possible. We don't want to find that  
22                  out Monday morning.

23                  MR. FREIDIN: Right. I will pose the  
24                  question to Mr. Cassidy and advise if he's going to  
25                  question the qualifications of Mr. Heseltine to testify

1       regarding the results of the surveys.

2                   MADAM CHAIR: That's right. And please  
3       notify --

4                   MR. FREIDIN: I will undertake to pass  
5       that on to Mr. Cassidy.

6                   MADAM CHAIR: If he could notify us by  
7       tomorrow because, again, we are not going to devote a  
8       lot of the time of the witnesses sitting here listening  
9       to that sort of thing. We will set aside time next  
10      Monday at four o'clock and hear it, if those are the  
11      objections Mr. Cassidy has need.

12                  MR. FREIDIN: Well, it might very well be  
13      if it's an objection which goes to the admissibility of  
14      the record itself it may be something which, as of  
15      necessity, would have to be dealt with before he gave  
16      the evidence on it. So we might --

17                  MADAM CHAIR: Well, we're not listening  
18      to evidence this week so we'll take care of it before  
19      the --

20                  MR. FREIDIN: We sit next Monday.

21                  MADAM CHAIR: That's right. And you just  
22      reminded me, Mr. Freidin, we want to start first thing  
23      Monday morning with the evidence. So we will hear any  
24      objections, if Mr. Cassidy has them, at four o'clock  
25      this Wednesday and, otherwise, we won't be listening to

1 any objections about the qualification of Mr.  
2 Heseltine.

3 We understood the way you discuss this  
4 matter in your witness statement that you're not going  
5 to be objecting to Mr. Heseltine talking about the  
6 results of the survey, so much as how meaningful the  
7 survey results are. But that's different than spending  
8 a couple of hours listening to why he isn't an expert  
9 in social science survey techniques or whatever.

10 MR. FREIDIN: Okay.

11 MADAM CHAIR: Okay, thank you.

12 We have a direct question for Mr.  
13 Heseltine, and that has to do with respect to the  
14 survey.

15 Mr. Martel and I noticed both in the  
16 national survey, the National Opinion Survey found  
17 behind Tab 5 as well as the Survey of Professional  
18 Forests in Canada found behind Tab 6 that there was  
19 more discussion about the results with respect to other  
20 provinces than with the Ontario.

21 Ontario seemed to be mentioned rarely in  
22 the discussion of the results of either of these  
23 opinion polls, and the Board was curious about that and  
24 wanted Mr. Heseltine to comment on it.

25 And with respect to Ms. Veilleux's

1 information, am I pronouncing her name correctly, Mr.  
2 Hanna?

3 MR. HANNA: Madam Chair, there will be an  
4 errata. I think it's Ms. Dube-Veilleux.

5 MADAM CHAIR: Dube-Veilleux.

6 MR. HANNA: And, unfortunately, it's  
7 excluded from the witness statement and that was my  
8 mistake. It's Dube-Veilleux.

9 MADAM CHAIR: Dube-Veilleux, okay.

10 With respect to Ms. Dube-Veilleux's  
11 evidence on page 20, she refers to planning road access  
12 in the context of the concerns of the tourist, tourism  
13 industry, and she referred us to the panel 9 witness  
14 statement with respect to access, planning and timber  
15 management, and we went through panel 9 evidence with a  
16 question in mind that we had really for NOTOA from the  
17 start of the hearing and, that is, is there any attempt  
18 being made by the Coalition to present the Board with  
19 the evidenced, perhaps by way of mapping, showing the  
20 lakes -- we have in front of us nothing that shows us  
21 where remote tourism operations take place.

22 We thought we had asked for that evidence  
23 some time ago and we weren't sure whether the Coalition  
24 would be presenting it to us. We certainly understand  
25 the evidence of Ms. Dube-Veilleux in this witness



1 statement and the evidence of the panel 9 witnesses on  
2 how you might plan for access roads within timber  
3 management planning, but we still are very much -- we  
4 don't have any idea about the number of lakes that are  
5 presently being used by remote tourist operators, nor  
6 indeed lakes being used by tourist operations  
7 accessible by road, and we believe that sort of  
8 evidence would be helpful to us.

9 And I think we have mentioned something  
10 about that in the reply evidence we requested of the  
11 proponent, but we would like, Mr. Hanna, if you could  
12 inform us by next week whether the Board can expect to  
13 receive that evidence from the Coalition.

14 MR. HANNA: Madam Chair, on that  
15 particular matter I will obviously relay this on to Ms.  
16 Dube-Veilleux as quickly as possible.

17 It may be a substantial undertaking and  
18 what I may come back to you and make an undertaking to  
19 you to present that as a separate file, basically a  
20 filed affidavit type evidence, because we may not be  
21 able to get it in time for her evidence next week, but  
22 I will to do whatever I can in that regard.

23 MADAM CHAIR: Thanks, Mr. Hanna.

24 And finally for panel 2 evidence, we have  
25 a question for Ms. Dube-Veilleux and it has to do with

1 her support for the Ontario Federation of Anglers &  
2 Hunters term and condition No. 79 which gives some  
3 power to local public advisory committees to obtain a  
4 bump-up, bump-ups for timber management plans.

5 On page 33 she predicts that the need for  
6 bump-ups will diminish, even under a system that would  
7 give the local PACs this kind of power, and we simply  
8 wanted to hear her -- we wanted to have her describe  
9 her expectation about what would happen within local  
10 public advisory committees if, in fact, this sort of  
11 authority was given to them and would she expect that  
12 there would be numerous bump-ups not only requested but  
13 in fact your term and condition No. 79 is sort of an  
14 automatic bump-up, at the bequest of the public  
15 advisory committee, and we want to get an idea what her  
16 expectation would be.

17 Mr. Freidin, we are still waiting to hear  
18 from a report on what happened with the negotiation  
19 process. We don't have a report yet from the  
20 facilitator.

21 MR. FREIDIN: My understanding it should  
22 have been filed.

23 MS. SEABORN: I received my copy, Madam  
24 Chair, I believe December 16th, 17th, somewhere around  
25 there.

1 MADAM CHAIR: We've received nothing.

2 MS. SEABORN: And all of the other  
3 parties did as well, so...

4 MADAM CHAIR: We have received nothing.

5 MR. FREIDIN: I'll remedy that as soon as  
6 I get back to the office.

7 MADAM CHAIR: Thank you, Mr. Freidin.

8 MS. SEABORN: On behalf of all the  
9 parties we apologize, Madam Chair, but certainly it was  
10 my understanding that this material was in the Board's  
11 hands well before Christmas.

12 MADAM CHAIR: Well, Mr. Freidin, had said  
13 that he would send it on to us and we were just  
14 waiting.

15 MR. FREIDIN: Well, it just may very well  
16 be that Mr. Illing was to send it along and it's fallen  
17 through the cracks at his office. I wasn't involved in  
18 the actual administration, but you'll get your copy  
19 forthwith.

20 MR. MARTEL: It spoiled my Christmas  
21 vacation not having it.

22 MR. FREIDIN: I'm sure it did, Mr.  
23 Martel.

24 MADAM CHAIR: Why don't we get some sense  
25 then of how -- well, first of all, Mr. Hanna, did you

1 have any questions to the parties about their  
2 statements of issues?

3 MR. HANNA: Madam Chair, perhaps just for  
4 the benefit of the parties, and this may be useful for  
5 the cross-examination throughout the Coalition's  
6 evidence, in the FFT statement of issues under point  
7 (b) issues for cross-examination, it's stated:

8 "The cross-examination will consist of  
9 the OFAH position and requirements for  
10 the public consultation in timber  
11 management planning."

12 I think I've indicated before that the  
13 witnesses will not be coming forward speaking to the  
14 OFAH or the Coalition's position, they will be speaking  
15 in terms of what their views are as to the proposals  
16 the Coalition is putting forward.

17 Now, just so you understand that  
18 difference, these witnesses are not being brought  
19 forward as spokespersons on behalf of the Coalition,  
20 they are being brought forward to provide their opinion  
21 evidence and obviously are being asked to comment on  
22 the proposals of the Coalition but not to state the  
23 Coalition position itself.

24 MADAM CHAIR: Anything else, Mr. Hanna?

25 MR. HANNA: No, Madam Chair.



1 MADAM CHAIR: Do the parties have  
2 anything to ask Mr. Hanna before we begin hearing this  
3 evidence on Monday?

4 (no response)

5 Let's get some idea of how long we are  
6 going to be in cross-examination, or Mr. Hanna, how  
7 long will you be in direct examination?

8 MR. HANNA: Madam Chair, I believe I  
9 indicated no more than a day.

10 MADAM CHAIR: Ms. Swenarchuk?

11 MS. SWENARCHUK: Not more than half a  
12 day, Madam Chair.

13 MADAM CHAIR: Mr. Freidin?

14 MR. FREIDIN: Oh, a half to three  
15 quarters of a day.

16 MADAM CHAIR: Ms. Seaborn?

17 MS. SEABORN: One and a half to two  
18 hours, Madam Chair.

19 MADAM CHAIR: Oh, and Mr. Cassidy?

20 MR. PASCOE: He indicated to me, Madam  
21 Chair, that he would be two to four hours.

22 MADAM CHAIR: Well, we'll certainly be  
23 finished hearing the evidence of those witnesses next  
24 week, Mr. Hanna.

25 Your bringing in Mr. -- or Dr. Carr from

1 British Columbia?

2 MR. HANNA: Yes, Madam Chair.

3 MADAM CHAIR: Right. So there's no  
4 possibility he could come any earlier.

5 MR. HANNA: We're trying to prebook  
6 flights for the sake of economy that we can, Madam  
7 Chair.

8 MADAM CHAIR: The witness statement of  
9 the Coalition panel No. 3 concerns Management  
10 Approaches to Site Protection, and the witness is Dr.  
11 William Carr.

12 Mr. Hanna, the Board's questions really  
13 have to do with whether the Coalition intends to give  
14 the Board any evidence of site damage as it exists in  
15 Ontario today with respect to timber management  
16 operations, or is the Coalition's evidence going to be  
17 completely focused on the methods of detecting site  
18 degradation and, of course, there is a long discussion  
19 by Dr. Carr of management strategies for dealing with  
20 possible site degradation.

21 The Board asks this question because on  
22 page 10 of Dr. Carr's statement he states that:

23 "A primary concern with site degradation.  
24 is its subtle yet wild spread and  
25 cumulative effect on many sites with

1 effects often manifested at some time  
2 in the future."

3 And on page 35 he makes the concluding  
4 remark that:

5 "Site degradation from current timber  
6 management practices are typically  
7 extensive."

8 The Board wants to know if Dr. Carr means  
9 that site degradation today in Ontario is typically  
10 extensive and, if so, what evidence does he have to  
11 back up that statement.

12 That is the Board's only request for  
13 clarification with this. Do you have any questions for  
14 the parties, Mr. Hanna?

15 MR. HANNA: I only have one statement of  
16 issues before me at the present time.

17 MADAM CHAIR: Oh, of course, that's  
18 right.

19 MR. HANNA: But there's nothing in FFT's  
20 statement of issues that I have questions on.

21 MADAM CHAIR: Do you have any questions  
22 for Mr. Hanna with respect to this evidence?

23 MR. FREIDIN: (nodding negatively)

24 MADAM CHAIR: Ms. Swenarchuk, how long  
25 will you be in cross-examination?

1 MS. SWENARCHUK: Again, I think not more  
2 than half a day.

3 MADAM CHAIR: Mr. Hanna, how long --  
4 you're going to say you'll be no more than a day--

5 MR. HANNA: Yes, Madam Chair.

6 MADAM CHAIR: --in your own examination  
7 of this evidence?

8 MR. HANNA: Yes, Madam Chair.

9 MADAM CHAIR: Mr. Pascoe, did Mr. Cassidy  
10 tell you how long he would be cross-examining?

11 MR. PASCOE: Yes, he did. He said  
12 between half a day and a full day.

13 MADAM CHAIR: Mr. Freidin?

14 MR. FREIDIN: I would estimate about a  
15 day and a half, a day to a day and a half.

16 MADAM CHAIR: Ms. Seaborn?

17 MS. SEABORN: Only about an hour on this  
18 one, Madam Chair.

19 MR. FREIDIN: Mr. Cassidy and I haven't  
20 had a chance to discuss where we're going, but our  
21 questions are similar and it may very well be that his  
22 cross-examination may fall into mine. I only say that  
23 because I add up the days and it's four.

24 MR. MARTEL: Four and an hour.

25 MADAM CHAIR: Well, the Board won't be



1 recalling Dr. Carr. He's flying in -- where does he  
2 live, Mr. Hanna, I forget? British Columbia.

3 MR. FREIDIN: Is there skiing there?

4 MADAM CHAIR: You can go up and meet with  
5 him, Mr. Freidin.

6 So Dr. Carr will finish next Thursday,  
7 the following Thursday, pardon me, and so I suggest  
8 that counsel get together and sort out how we will  
9 finish hearing Dr. Carr's evidence by our deadline.

10 MR. MARTEL: You can scope the questions,  
11 you and Mr. Cassidy can scope the questions.

12 MR. FREIDIN: Scoping the answers is more  
13 important than the questions.

14 MADAM CHAIR: Ms. Swenarchuk?

15 MS. SWENARCHUK: Madam Chair, what will  
16 be the order of cross-examination?

17 MADAM CHAIR: Well, we are sort of -- I  
18 guess we are sort of reversed a bit; aren't we? Ms.  
19 Seaborn goes last.

20 MR. FREIDIN: Second last.

21 MADAM CHAIR: Second last.

22 MS. SEABORN: Just prior to Mr. Freidin.

23 MADAM CHAIR: That's right. Mr. Freidin,  
24 Ms. Seaborn, and the questions of parties in support  
25 versus parties in opposition.

1                   What did we do with your case? I believe  
2                   Mr. Hanna began cross-examining for your evidence, so  
3                   you will be first to cross-examine Mr. Hanna's  
4                   witnesses followed by the OFIA.

5                   Is that it, Mr. Hanna? Is there anything  
6                   else we should accomplish at the scoping session,  
7                   except set a date -- have we set a date for panel 4?

8                   MR. PASCOE: Yes, we do. It's Tuesday  
9                   January the 14th at four o'clock.

10                  MR. FREIDIN: Sorry, Madam Chair. I'm  
11                  just wondering, Mr. Hunter -- I got the impression that  
12                  Mr. Baeder was going to be involved cross-examining  
13                  panel 2 and 3.

14                  Now, I remember seeing a statement of  
15                  issues in 2 and 3 of course is only due today so it may  
16                  still be in the works or in the mail. So there's an  
17                  additional party who might be involved.

18                  My sense in talking to Mr. Hunter was  
19                  that if they were going to be involved they would more  
20                  likely be involved in panel 2 than panel 3.

21                  MADAM CHAIR: Well, didn't Mr. Hunter --  
22                  he's not confusing the interrogatories with statements  
23                  of issues; is he?

24                  MR. FREIDIN: No, but...

25                  MADAM CHAIR: Did he submit

1 interrogatories for panel 1, Mr. Hanna, or did --

2 MR. FREIDIN: No, he didn't.

3 MADAM CHAIR: Or was it a statement of  
4 issues.

5 MR. FREIDIN: He submitted  
6 interrogatories for panel 1 and 2.

7 MR. HANNA: That's right.

8 MADAM CHAIR: We don't have a statement.  
9 I assume Mr. Hunter is not going to be cross-examining,  
10 you can call him, Mr. Freidin, and he should get in  
11 touch with the Board pretty quickly if...

12 MR. FREIDIN: If he wants to  
13 cross-examine panel 2 or 3.

14 MADAM CHAIR: Yes, he better inform Mr.  
15 Pascoe immediately.

16 MS. SEABORN: Perhaps Mr. Pascoe could  
17 contact Mr. Baeder just because Mr. Hunter mentioned  
18 that it was Mr. Baeder at his firm who was looking  
19 after those two panels.

20 MADAM CHAIR: Is Mr. Baeder as difficult  
21 to get in touch with as Mr. Hunter?

22 MR. FREIDIN: No one is as difficult to  
23 get in touch with as Mr. Hunter.

24 MADAM CHAIR: Because I don't want Mr.  
25 Pascoe spending the next few days trying to track him

1 down.

2 MR. FREIDIN: Well, I think -- well, Mr.  
3 Pascoe will be equally adept I'm sure at tracking down  
4 Mr. Baeder and I think Mr. Baeder will respond more  
5 quickly to him.

6 Maybe Mr. Pascoe could find out and maybe  
7 advise the other parties how long that  
8 cross-examination is anticipated to be, in fact, if  
9 they are going to cross-examine.

10 MADAM CHAIR: Well, I think the simplest  
11 thing to do is if Mr. Baeder is going to cross-examine  
12 at all, then he should get in touch with counsel here  
13 and you can inform him of the schedule and make an  
14 accommodation to ensure that all the cross-examinations  
15 are finished within the week.

16 MR. FREIDIN: All right. And if they do  
17 cross-examine, can I inform Mr. Baeder that he would  
18 follow Forests for Tomorrow?

19 MADAM CHAIR: Yes.

20 Oh, Mr. Pascoe reminds me that we have  
21 two documents that require exhibit numbers, or to be  
22 made exhibits, and these are following from satellite  
23 hearings.

24 The first is clarification to questions  
25 by the Board of information presented by Mr. Ken McCrae



1 whose address is Stittsville, Ontario, and he appeared  
2 at the Ottawa satellite hearing November 27th of 1991,  
3 and he has sent us a letter that we received on  
4 December the 23rd, and if there are no objections from  
5 the parties we can make that letter Exhibit 1981B. Mr.  
6 McCrae's submission to the Board was given the Exhibit  
7 No. 1981 and we will now make that A, so that both  
8 pieces of his evidence are together.

9 ---EXHIBIT NO. 1981B: Letter from Ken McCrae received  
10 December 23, 1991.

11 MADAM CHAIR: And this is the same  
12 situation with Mr. Alfred Beck from Pembroke Outdoor  
13 Sportsmen Club. Mr. Beck gave evidence or made  
14 submissions to the Board in Ottawa, November 27th, and  
15 he has communicated with us again. His letter is dated  
16 November the 29th, and this further correspondence will  
17 become Exhibit 1989B.

18 ---EXHIBIT NO. 1989B: Letter dated November 29, 1991  
19 from Mr. Beck, Pembroke Outdoor  
Sportsmen Club.

20 MADAM CHAIR: All right, thank you very  
21 much, and we will see you Monday morning at 10:30.

22 ---Whereupon the hearing was adjourned at 3:10 p.m., to  
23 be reconvened on Wednesday, January 8th, 1992, at  
24 4:00 p.m.

25 BD [C. copyright 1985].













